BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

CAROL DENNY Claimant	
VS. ST. JOSEPH MEDICAL CENTER Respondent Self-Insured	Docket No. 184,212
AND	
KANSAS WORKERS COMPENSATION FUND	

ORDER

Claimant appeals from a May 9, 1995 Preliminary Hearing Order entered by Shannon S. Krysl.

ISSUES

In the application for review, claimant states the issue to be whether the penalty attorney and fees awarded were appropriate. Claimant argues that both should have been for higher amounts.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- (1) An Award of penalties pursuant to K.S.A. 44-512 and related attorney fees is a final order subject to appeal to the Appeals Board.
- (2) The Appeals Board finds that the award of penalties should be affirmed. Essential facts are not in dispute. Claimant made demand for payments under an agreed upon award. Respondent became 13.28 weeks in arrearage before making payments. Claimant asked for penalties in the amount of one hundred dollars (\$100) a week for a total of one thousand three hundred and twenty-eight dollars (\$1,328). The Administrative Law Judge awarded the respondent to pay two hundred and fifty (\$250) in penalties and held in abeyance the balance with the proviso that respondent would not be obligated to pay this balance if the remaining payments required by an the Award were made in a timely manner. The penalty provisions of K.S.A. 44-512a provide for penalties of "... not more than \$100 per week for each week any disability compensation is past due " The statute does not make the order of one hundred dollars (\$100) per week mandatory. The evidentiary record contains no indication of either mitigating or aggravating factors. We consider the burden to be claimant's and, accordingly, affirm the decision by the Administrative Law Judge.
- (3) The Appeals Board also affirms the decision by the Administrative Law Judge to award two hundred and fifty dollars (\$250) in attorney fees. The claimant's attorney requested attorney fees in the amount of one hundred and twenty-five dollars (\$125) per

hour for four (4) hours. We cannot tell from the Order or the record whether the decision to award less was based upon a lower hourly rate or fewer hours. In either event, the evidentiary record contains nothing which would indicate the award was inappropriate. As the burden is on the claimant to establish a right to the attorney fees, the decision by the Administrative Law Judge must be affirmed.

Wherefore, the Appeals Board finds that the award of attorney fees and penalties dated May 9, 1995 should be, and the same is hereby, affirmed.

IT IS SO ORDERED.
Dated this day of September 1995.
BOARD MEMBER
BOARD MEMBER
BOARD MEMBER
Steven R. Wilson, Wichita, KS

c: Steven R. Wilson, Wichita, KS Vaughn Burkholder, Wichita, KS John C. Nodgaard, Wichita, KS Shannon S. Krysl, Administrative Law Judge Philip S. Harness, Director